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9	Attorneys for Defendants	
10	IMITED STATES	S DISTRICT COURT
11		ICT OF CALIFORNIA
12		
13	SAN FRANC	ISCO DIVISION
14	EPIC GAMES, INC., Plaintiff,	Case No. 3:20-cv-05671-JD
15	Vs.	
16	GOOGLE LLC et al.,	
17	Defendants. PURE SWEAT BASKETBALL, INC., et. al,	Case No. 3:20-cv-05792-JD
18	Plaintiffs,	
19	vs. GOOGLE LLC et al.,	
20	Defendants.	C N. 2.20 0.7772 ID
21	PEEKYA APP SERVICES, INC., et. al, Plaintiffs,	Case No. 3:20-cv-06772-JD
22	vs.	DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
23	GOOGLE LLC et al., Defendants.	DEFENDANTS' MOTION TO DISMISS
24	Defendants.	EPIC GAMES, INC'S COMPLAINT AND DEVELOPERS' FIRST CONSOLIDATED
25		CLASS ACTION COMPLAINT
26		Judge: Hon. James Donato Courtroom: 11, 19th Floor
27		Hearing: January 28, 2021
28		
5 &c		Case Nos. 3:20-cv-05671-JD; 3:20-cv-05792-JD;

MORGAN, LEWIS & BOCKIUS LLP
ATTORNEYS AT LAW
SAN FRANCISCO

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In accordance with Rule 201 of the Federal Rules of Evidence, Defendants Google LLC, Google Payment Corp., Google Commerce Ltd., Google Ireland Limited, and Google Asia Pacific Pte. Ltd. (collectively, the "Defendants") respectfully request that this Court take judicial notice of Exhibit A to the Declaration of Brian C. Rocca ("Rocca Decl."), which is a true and correct copy of the Google Play Developer Distribution Agreement (the "DDA"), a document repeatedly referenced in the Complaints.

GROUNDS FOR JUDICIAL NOTICE

"[C]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Federal Rule of Evidence 201 allows a court to take judicial notice of facts that are "not subject to reasonable dispute because [they] (1) [are] generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). "Under the 'incorporation by reference' doctrine, a court may look beyond the pleadings without converting the Rule 12(b)(6) motion into one for summary judgment." *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012); *see United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (explaining that a document may be incorporated by reference if the document forms the basis of the plaintiff's claim); *Shrem v. Southwest Airlines Co.*, No. 15-cv-04567-HSG, 2016 WL 4170462, at *1 (N.D. Cal. Aug. 8, 2016) (noting that incorporation-by-reference doctrine applies when plaintiff's complaint does not expressly attach the document).

Exhibit A to the Declaration of Brian C. Rocca ("Rocca Decl.") is a true and correct copy of the DDA. Plaintiffs repeatedly quote or refer to this document, but do not attach it to their complaint. *See e.g., Epic Games, Inc. v. Google LLC*, No. 3:20-cv-05671-JD, Dkt. No. 1, Complaint ¶¶ 40 ("The claims addressed in this Complaint relate to the DDA or to Epic's relationship with Google under the DDA...."), 90-91, 125-27, 152-153, 168-169, 176, 197-198, 209-210, 220; *Pure Sweat Basketball, Inc. and Peekya App Services, Inc. v. Google LLC*, No.

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1	3:20-cv-05792-JD, Dkt. No. 56, First Consolidated Complaint ¶¶ 102 ("Google imposes this	
2	restraint through provisions of the Google Play Developer Distribution Agreement ('DDA'),	
3	which Google requires all app developers to sign before they can distribute their apps through the	
4	Play Store."), 103, 235-237, 245, 267-269. On a Rule 12 motion, "courts may take into account	
5	documents whose contents are alleged in a complaint and whose authenticity no party questions,	
6	but which are not physically attached to the [plaintiff's] pleading." Davis, 691 F.3d at 1160	
7	(internal quotations omitted). The DDA, thus, is alleged in the complaint and no party questions	
8	its authenticity, and should be judicially noticed.	
9	***	
10	For the foregoing reasons, Google respectfully requests that the Court take judicial notice	
11	of Exhibit A to the Declaration of Brian C. Rocca.	
12		
13	Dated: November 13, 2020 MORGAN, LEWIS & BOCKIUS LLP	
14		
15	By: /s/ Brian C. Rocca	
16	Brian C. Rocca	
17	Attorneys for Defendants	
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28	Case Nos 3:20-cy-05671-ID: 3:20-cy-05792-ID:	

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